



October 17, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342

OR2001-4701

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153498.

The Texas Department of Criminal Justice (the "department") received two requests for all documents and correspondence in a specified individual's Pardons & Parole Board file. You state that you have released the public information. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 508.313 of the Government Code. We have considered your exception and reviewed the submitted information.

Initially, we address your assertion that the department has no duty to request a decision from this office for the requests. You state that the first request was made to the Austin office of the Texas Board of Pardons and Paroles (the "board") which is a separate state agency. You explain that the board forwarded the request to the department. You also state that the requestor addressed the second request to the board, but the request was sent to the address of the department's Texarkana Parole Division Office. Pursuant to section 552.221(a) of the Government Code, an officer for public information of a governmental body shall promptly produce public information for inspection or duplication. Generally, a request for information need not name the Public Information Act (the "Act") or be addressed to the officer for public information. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974). Further, a hypertechnical reading of the Act does not effectuate the purpose of the Act.

In this instance, however, the first request was addressed and sent to the board, a different governmental body than the department. Therefore, we conclude that the department was not required to comply with this request. Although the second request was addressed to

the board, the second request was mailed to the department and seeks information that the department maintains. Because the department can always choose to comply with a request that is not technically correct under the Act and you have decided to request a decision from this office, we will address your asserted exception.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses information protected by other statutes. You claim that the submitted information is made confidential by section 508.313 of the Government Code, which accords confidentiality to certain records. Open Records Decision No. 190 at 2 (1978); *see also* Attorney General Opinion H-427 (1974); Open Records Decision No. 33 (1974). Section 508.313 provides:

All information obtained and maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

- (1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;
- (2) a releasee; or
- (3) a person directly identified in any proposed plan of release for an inmate.

You inform us that the submitted records related to a parolee and are maintained by the department's parole division. After reviewing your arguments and the submitted information, we agree that the information is made confidential by section 508.313 and may only be released in accordance with that statute. Because we find that none of the release provisions of section 508.313 applies to this information, we find that the submitted information must be withheld from the requestor under section 508.313 of the Government Code in conjunction with section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order

to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

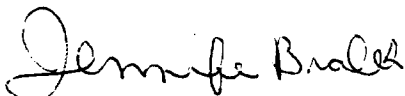
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 153498

Enc: Submitted documents

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(w/o enclosures)